UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA, Plaintiff, v. **Martin BAHENA-Moreno,** Defendant(s)	Magistrate Case No. '08 MJ 0433 COMPLAINT FOR VIOLATION OF: Title 8 U.S.C., Sec. 1324 (a)(1)(A)(iii) Harboring and Concealing(Felony) Title 8, U.S.C., Section 1326 Deported Alien Found in the United States

The undersigned complainant, being duly sworn, states:

COUNT ONE

On or about **February 13, 2008** within the Southern District of California, defendant **Martin BAHENA-Moreno**, knowing and in reckless disregard of the fact that certain aliens, namely, **Fernando GONZALEZ-Alejandre, Felix LUIS-Lopez, and Fausto Urbano TORRES-Ocampo**, had come to, entered and remained in the United States in violation of law, did conceal, harbor and shield from detection said aliens, and attempt to conceal, harbor and shield from detection said aliens, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iii).

COUNT TWO

On or about **February 13, 2008** within the Southern District of California, defendant, **Martin BAHENA-Moreno,** an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8 United States Code, Section 1326.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Andrew Kahl SPA
SIGNATURE OF COMPLAINANT
Andrew Kahl
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 14th DAY OF **FEBRUARY 2008**

Anthony J. Battaglia
UNITED STATES MAGISTRATE JUDGE

CONTINUATION OF COMPLAINT:
Martin BAHENA-Moreno

PROBABLE CAUSE STATEMENT

Furthermore, the complainant states that **Fernando GONZALEZ-Alejandre, Felix LUIS-Lopez, Fausto Urbano TORRES-Ocampo, and Gabriela G. ZAVALA-Higuera,** are citizens of a country other than the United States; that said aliens have admitted that they are deportable; that their testimony is material, that it is impracticable to secure their attendance at the trial by subpoena; and they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144G.

On Tuesday, February 12, 2008, Border Patrol Agent F. Rivera was conducting interdiction operations on Interstate 8 west of the U.S. Border Patrol Interstate 8 westbound Checkpoint near Pine Valley, California. Agent Rivera is assigned to the East County Intelligence Division, which operates in Campo, Boulevard, and El Cajon Station's areas of responsibility. Agent Rivera was operating in plain clothes and was driving an unmarked agency vehicle.

At approximately 7:45 p.m. Agent Rivera noticed a light blue Buick, bearing California license plates, traveling from westbound on Interstate 8 and exiting at the Pine Valley Exit in Pine Valley, California. The Buick re-entered westbound I-8 and then parked on the shoulder of Interstate 8 on the westbound lanes immediately east of the Pine Valley Creek Bridge. While passing by the parked Buick, Agent Rivera observed four people jumping out of the thick brush from the shoulder of the road and load into the Buick. Agent Rivera alerted the East County Intelligence Division and additional unmarked vehicles subsequently continued surveillance of the Buick as it continued west on Interstate 8.

In El Cajon, California on Interstate 8 westbound at the 2nd Street exit, Border Patrol Agent H. Cuevas activated his service vehicle's emergency lights and siren in an attempt to stop the aforementioned Buick. Failing to yield to Agent Cuevas' emergency vehicle's lights and siren, the driver of the Buick continued westbound on Interstate 8. After a short pursuit, Agent Cuevas deactivated his emergency equipment and terminated the pursuit at the Main Street exit as per order of Supervisory Border Patrol Agent J. Dinise. With a collaborative effort of Smuggling Interdiction Group East and the East County Intelligence Division, both teams in their unmarked service vehicles continued to monitor the Buick. The driver of the Buick exited Interstate 8 at the Jackson Drive Exit. The driver took the sharply curving off ramp at an extremely high rate of speed, was unable to negotiate the turn, and crashed into an embankment covered with iceplant.

At approximately 8:15 pm, Border Patrol Agent J. Remenar and Baez witnessed a number of individuals fleeing from the crashed Buick and pursued the fleeing subjects. Agent Remenar approached the individuals and identified himself as a United States Border Patrol Agent and questioned the three individuals as to their citizenship. All three subjects, later identified as **Felix LUIS-Lopez**, **Fernando GONZALEZ-Alejandre**, and **Gabriela G. ZAVALA-Higuera**, freely claimed to be citizens and nationals of Mexico. All three subjects claimed to not be in possession of proper immigration documentation that would enable them to enter or remain in the United States legally. Agent Remenar and Baez placed all three subjects under arrest and transported two subject to the El Cajon Border Patrol Station.

Agent Dinise observed that ZAVALA was neatly dressed and did not have any dirty clothing on. ZAVALA admitted to being in the smuggling vehicle prior to picking up the two illegal aliens in Pine Valley, California. ZAVALA was in possession of a hotel key card that she admitted that it was given to her by the smugglers. The two smuggled aliens stated that ZAVALA was already in the vehicle when they got into the vehicle in Pine Valley. ZAVALA was injured in the vehicle crash and admitted that she was in the front passenger seat. ZAVALA admitted to residing in the hotel room the night prior to the smuggling event in Pine Valley, California.

CONTINUATION RE:
Martin BAHENA-Moreno

ZAVALA admitted to leaving her personal property and identification in the hotel room.

Agent Dinise asked ZAVALA for consent to enter the room that she had been residing in at the Economy Inn in San Ysidro, California. ZAVALA gave consent and provided the key to Agent Dinise to enter the room. It was Agent Dinise's belief that ZAVALA had dominion and control of the room and had granted him consent to enter.

Agents F. Rivera, H. Cuevas, B. Blanchard and J. Remenar drove the three illegals in their custody to the Economy Inn in San Ysidro, California. The agents wanted to determine if the two smugglers had returned to the room and wished to recover ZAVALA's personal belongings. They arrived at approximately 3:15 a.m.

ZAVALA had difficulty in identifying the exact room she had been in at the inn. ZAVALA could only affirmatively state that the room was on the second floor. Agent Rivera took the key card provided by ZAVALA to the front desk manager of the inn. The manager was able to determine that the key card was issued to room number 252, on the second floor.

At approximately 3:30 a.m, the agents went to the door and knocked twice on the door each time announcing "POLICE". None of the agents heard any noise coming from the room or any visible movement or lighting being switched on. Agent Rivera opened the door utilizing the key card. Agent Dinise, in plain clothes and wearing a ballistic tactical vest marked with POLICE FEDERAL AGENT and with his Border Patrol Badge clearly visible hanging from around his neck, made entry into the room and announced "POLICE, ENSENEME SUS MANOS, POLICE ENSENEME SUS MANOS".

Agent Dinise could see one individual, later identified as Fausto TORRES-Ocampo, lying on the floor. That subject complied and showed his hands. Agent Dinise shifted his attention to the other person, later identified as defendant **Martin BAHENA-Moreno**, who was lying in the bed. Agent Dinise ordered BAHENA to show his hands and announced "POLICE" again. BAHENA's hands were not visible under the covers of the bed. BAHENA was not compliant and continued to move his hands under the covers and refused to show Agent Dinise his hands. Agent Dinise again ordered BAHENA to show his hands and announced "POLICE". BAHENA continued to move his hands under the covers. At this time Agent Dinise believed that BAHENA was trying to retrieve a weapon and attempting to bring it to bear against him. Agent Dinise, fearing for his life and the lives of his teammates, fired one round from his weapon at BAHENA to stop the threat.

MATERIAL WITNESS STATEMENTS:

Material Witnesses **Fernando GONZALEZ-Alejandre and Felix LUIS-Lopez** were interviewed separately and stated that they are citizens and nationals of Mexico illegally present in the United States. They stated that they did not have any immigration documents allowing them to be in the United States legally. They stated that arrangements had been made in Baja California, Mexico to be smuggled into the United States. Both material witnesses stated that they were to pay between $1,600.00 to $2,000.00 U.S. dollars to be smuggled to various parts of the United States. Both material witnesses stated that a foot guide led them across the border and to the pick up location. Both material witnesses stated that there was a heavy set male driver and a female passenger in the vehicle when it arrived. Both material witnesses stated that the driver and the foot guide fled the scene when the vehicle crashed.

CONTINUATION RE:
Martin BAHENA-Moreno

MATERIAL WITNESS : Gabriela G. ZAVALA-Higuera

ZAVALA stated she does not have any immigration documents allowing her to be in or remain in the United States legally. ZAVALA said that she had been living in Colonia Zona Norte in Tijuana, but that for about the past month she has been living here in the United States, in a variety of places, with her boyfriend Martin BAHENA-Moreno.

ZAVALA was asked how she had become involved in the smuggling of aliens, and she stated that she had met her boyfriend BAHENA, in Tijuana about four months ago. ZAVALA stated that BAHENA is known by the moniker "Malo" and that everyone calls him that or Martin. ZAVALA said that she did not initially know that BAHENA was involved in the smuggling of aliens, and that he did not tell her until they were here in the United States.

ZAVALA said that they crossed into the United States together about one month ago through the Las Playas area of Tijuana. She stated that there had been a foot guide who crossed them and that during the journey she had tripped and scraped her knee. She stated that BAHENA has a female relative in Los Angeles and that while the two of them were up in Los Angeles at his relative's house, he had explained to her that he is involved in alien smuggling and that this is what he does.

Since that time, she stated that she has accompanied BAHENA in three alien smuggling events, including one which occurred yesterday, prior to the smuggling event which led to her detention. She stated that the groups they pick up were always four persons or less. She stated that they have been taking the smuggled aliens to the Economy Inn located in San Ysidro, California.

ZAVALA said that she and BAHENA had previously rented a room at the Economy Inn and stayed there for about 15 days. After that they had gone up to Los Angeles again, with BAHENA's family and had then returned to San Ysidro yesterday, again renting a different room at the Economy Inn.

ZAVALA said that yesterday morning after midnight they were called to go and pick up some undocumented aliens just about a block away from the Economy Inn. She stated that BAHENA drove and she went with him, and ZAVALA stated that they picked up three smuggled aliens, taking them back to their motel room. ZAVALA stated that they were aware that these persons did not have documents allowing them to enter the United States legally. ZAVALA stated that she knew that it was against the law to smuggle undocumented aliens.

When asked how much she is paid, ZAVALA stated that she does not receive any money. She stated that BAHENA is paid, and when asked by whom, she stated that she supposes that the aliens themselves pay him. She stated that the guides cross the aliens and BAHENA is called to pick them up. She stated that BAHENA gives her money and buys her things, but that she doesn't know anything about the financial side of his involvement in alien smuggling.

ZAVALA stated that around 8 p.m. on February 12th she left with another smuggler whom she has only met about three times in the past, to go out to pick up more smuggled aliens. She stated that she left one of the three smuggled aliens that they had picked up alone in the motel room, and then left together with the other smuggler, whom she described as an older fat guy. ZAVALA said that she couldn't remember the other smuggler's name, but that he had told her his name. She stated that they had left last night at around 8:00 p.m. and had taken the room's key card with her. ZAVALA said that they drove together out to eastern San Diego County with the older fat guy driving, and her seated in the passenger seat. She stated that they pulled up to the side of the highway and three aliens climbed in the car. ZAVALA said that she told them to crouch down in back of the car so as not to be seen. She said that she did this because she was afraid that if they were seen, that the Border Patrol would chase the car. ZAVALA stated that she knew that these persons were undocumented aliens.

ZAVALA said that the driver said that they were being followed, and started going very fast. At one point the driver acted as through he was going to stop, but then accelerated even faster. ZAVALA said that she saw emergency lights behind her, and that she could not remember whether she had heard sirens. When asked how fast they were going, ZAVALA stated that it had been at least 80 MPH.

ZAVALA said that she told the driver to exit the freeway, but that he had ignored her. Later he did try to take an exit, but he took a curve too fast, couldn't brake and crashed the car. ZAVALA said that she flew face first into the windshield, smashing her nose and upper lip. She said that she and two of the aliens were arrested at the crash scene and that the driver and another alien had run away and escaped.

When asked whether it was true that she was the niece of an alien smuggling boss known as "Dona Ruth", ZAVALA said that "Dona Ruth" had been married to her uncle, but that they are no longer married. She stated that she calls her and talks to her on occasion and that she considers her to be like an aunt. ZAVALA stated that Ruth is an alien smuggler and that she does run an alien smuggling organization. ZAVALA claimed not to have any further information regarding "Dona Ruth".

ZAVALA was shown the photographic lineup labeled "A". She identified photo #5 as "Malo", her boyfriend, whose name is Martin BAHENA-Moreno. Photo #5 of photo lineup "A" is defendant Martin BAHENA-Moreno.

ZAVALA was shown the photographic lineup labeled "B". She identified photo #2 as a smuggled alien whom she and BAHENA had picked up on the morning of February 12th, and whom she had left in the Motel room when she went to pick up more aliens with the fat guy. ZAVALA said that this person was still in the motel room when the agents entered, and when BAHENA was shot. Photo #2 of photo lineup "A" is smuggled alien Fausto Urbano TORRES-Ocampo.

MATERIAL WITNESS: Fausto Urbano TORRES-Ocampo

TORRES stated that he does not have nor has he ever had any immigration documents allowing him to be in or remain legally in the United States.

TORRES stated that he arrived in Tijuana via plane on February 11, 2008 at 1:15 p.m. He stated that his final destination in the United States was to have been Houston, Texas, where his brother lives. He said that he had personally made the arrangements to be smuggled via phone, from Guerrero, with a subject called "Malo". The arrangements were that he was to pay $1500.00 (USD) in order to be smuggled to Los Angeles, California, and from there, he was to have paid a "raitero" ("driver") to drive him from Los Angeles to Houston. TORRES said that he recognized "Malo" by his voice and mannerisms, as being the same "Malo" who had picked him up and brought him to the motel room.

TORRES said that "Malo" gave him instructions that once he arrived in Tijuana, he was to check into a hotel and then call him to tell him the Hotel and room number, so that he could send someone for him. TORRES said that he did so upon his arrival in Tijuana, and that a subject called "El Raton" called telling him to be ready on Tuesday morning at about 3:00 a.m. because they were going to smuggle him across at that time.

TORRES stated that 3 guides came for him and brought him to an area of the border fence, where there were some stores on the north side. He said that a ladder was placed for him to scale the secondary fence, and that he ran north towards the stores. TORRES said that the foot guides fled back into Mexico as a Border Patrol unit responded to the area. TORRES then ran north to an area where there were some apartments and he then crossed a bridge, the other end of which was near a bank. He walked to an Exxon gas station, which was across the street from a Chevron.

At that point TORRES called "Malo" to come and pick him up, and "Malo" told him that he would arrive in two minutes to pick him up. TORRES said that "Malo" arrived driving a grey or black Honda, and that there was a young lady seated in the passenger seat. TORRES said that she was well-dressed, perfumed and was clearly not a smuggled alien. TORRES said that he believed that "Malo" had referred to her as "Erica". He described her as being short, thick, fair-skinned, and had kind of light colored hair. Apart from the girl, TORRES said that there was another male smuggled alien lying down in back of the car, as well as another male smuggled alien inside the vehicle's trunk. TORRES said that he was told to crouch down in the back of the Honda, out of view.

TORRES said that they were taken to a nearby motel and "Malo" and the girl rented a room. They brought TORRES and the other two smuggled aliens into the room. Once in the room, "Malo" and the girl told them not to use the phone, not to open the windows, and to lie down and sleep. TORRES said that he believed that they did not want them to be seen, and that was why they were told not to open the windows.

At about 10:00 a.m. TORRES said that "Malo" left with the other two smuggled aliens, and that they said that he was taking them north to Los Angeles.

TORRES said that the girl received a call to go and pick up more aliens. He stated that he overheard the girl say something about somewhere on a highway, but couldn't remember the number. After a short time an older guy showed up in a blue car and just honked his horn, without getting out of the car. TORRES said that he just saw him from the window and didn't get a good look at him. At that point TORRES said that he was actually left alone in the motel room. He stated that the girl had left with the only key card for the room.

TORRES said that this morning, at about 5:00 a.m. some police officers knocked the door open and were yelling "police" and some other things in English. TORRES said that he couldn't understand what else they had been yelling. TORRES said that he was on the floor, and "Malo" was on the bed. He stated that the officers yelled "Police!" five or six times, and were yelling other things in English, which he didn't understand. He stated that the officers were wearing black and had badges displayed on their chests.

TORRES stated that he thought that "Malo" had tried to reach for his cell phone or something on the nightstand and next he heard one gunshot. TORRES said that this occurred after about thirty seconds of the officers yelling at "Malo". He said that "Malo" was shot in the leg by the agents.

TORRES was shown the photographic lineup labeled "A". He identified photo #5 as "Malo", the smuggler who had come and picked him up, together with the girl, and who was later shot by the officers in the motel room. Photo #5 of photo lineup "A" is defendant Martin BAHENA-Moreno.

TORRES was shown 3 color Polaroid photographs of all of the persons detained in the bailout of the blue Buick Century. TORRES identified photo #2 as "Malo's" girlfriend, the other smuggler who had left in the blue car, the prior evening. Photo #2 is material witness Gabriela Guadalupe ZAVALA-Higuera.